

JOINDER AND SEVERANCE — When offenses are joined under Rule 13.3(a)(2) or (3), severance is question for court's discretion — Revised 11/2009

If different offenses are charged in the same charging document on any ground other than the "same or similar character" of the offenses, Rule 13.3(a)(1), Ariz. R. Crim. P., the decision whether to sever the offenses for trial is within the trial court's discretion:

A decision to grant denial [*sic*] of a motion to sever is within the sound discretion of the trial court and will be reversed only if that discretion is abused. *State v. Cruz*, 137 Ariz. 541, 544, 672 P.2d 470, 473 (1983). In deciding whether to grant the severance, the trial court weighs the possible prejudice to the defendant against the interests of judicial economy. *Id.*

State v. Mauro, 149 Ariz. 24, 27, 716 P.2d 393, 396 (1986). A defendant who moves to sever charges for separate trial must show that he would be prejudiced by joinder of the charges for trial, and that such prejudice would outweigh the benefits of judicial economy in a joint trial.:

Defendant had the burden of showing, at the time of his motion, that he would be prejudiced if the trial court refused to grant separate trials. *State v. Cruz*, 137 Ariz. 541, 544, 672 P.2d 470, 473 (1983). Such prejudice, if any, must be balanced against the countervailing consideration of judicial economy. *Id.*

State v. Via, 146 Ariz. 108, 115, 704 P.2d 238, 245 (Ariz. 1985), *cert. denied* 475 U.S. 1048 (1986). The defendant cannot meet that burden if, even if trials were held separately on each of the charges, the evidence as to one charge would have been admissible at the trial on the others for some relevant purpose, such as to show intent or "as part of the complete picture." *State v. Mincey*, 115 Ariz. 472, 483, 566 P.2d 273, 284 (1977).

"It is the general policy in Arizona that joinder of crimes based upon the same conduct or otherwise connected together in their commission is permissible when such is not prejudicial to the defendant." *Romley v. Superior Court*, 174 Ariz. 126, 129, 847 P.2d 627, 630 (App. 1993). Nevertheless, the rules on joinder and severance are intended to further not only liberal joinder but also liberal severance. In weighing the defendant's interests in severance against the interests of judicial economy, "Where there is any doubt, it must be resolved in favor of the defendant." *State v. Roper*, 140 Ariz. 459, 462, 682 P.2d 464, 467 (App. 1984).